

Message Text

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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

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O 062234Z MAY 75

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC NIACT IMMEDIATE 9078

C O N F I D E N T I A L SECTION 1 OF 2 BRASILIA 3541

EXDIS

E.O. 11652: XGDS-1

TAGS: PFOR; BR

SUBJECT: SUSPENSION OF FMS AS A RESULT OF SHRIMP BOAT SEIZURES

REF: STATE 104657

1. FOREIGN MINISTER SILVEIRA ASKED ME TO COME TO SEE HIM AT 5:00 PM MAY 5. (MY REQUEST TO SEE HIM ON ANOTHER MATTER CROSSED WITH HIS.) THE SUBJECT WAS THE SUSPENSION OF FMS AS A RESULT OF THE SEIZURES.

2. AFTER STATING THAT HE AND PRESIDENT GEISEL WERE "VERY PREOCCUPIED" WITH THE TURN OF EVENTS, SILVEIRA, WHO SEEMED TO ME TO BE SOMEWHAT ILL AT EASE AND UNCERTAIN ABOUT THE FACTS, MADE TWO BASIC POINTS:

A. THE GOB WAS DISTURBED NOT ONLY BY THE SUSPENSION ITSELF BUT ALSO BY THE MANNER IN WHICH THE NOTIFICATION OF THE SUSPENSION HAD BEEN GIVEN. SILVEIRA ALLEGED THAT THE SUSPENSION HAD BECOME KNOWN TO THE BRAZILIAN EMBASSY ONLY WHEN THE ASSISTANT NAVAL ATTACHE VISITED THE PENTAGON ON FRIDAY, MAY 2 TO INQUIRE ABOUT THE SHIPMENT OF SOME NAVAL EQUIPMENT AND WAS TOLD THAT "THE STATE DEPARTMENT" HAD SUSPENDED FMS BECAUSE OF THE SEIZURES. SILVEIRA CLAIMED AT ONE POINT RATHER HALF-HEARTEDLY, THAT THE GOB HAD NOT KNOWN ABOUT THE US LAW.

B. SILVEIRA SPEND MORE TIME COMPLAINING THAT THE
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SHRIMP AGREEMENT WAS USELESS, THAT IT WAS TURNING OUT TO

BE ONE-SIDED, THAT IT HAD CONTEMPLATED THAT US SHRIMPING ACTIVITIES WOULD BE LIMITED TO THE AREA OF AGREEMENT AND THAT BRAZIL WOULD NEVER HAVE NEGOTIATED THE AGREEMENT IF IT HAD KNOWN OF THE US INTERPRETATION. ONLY BY INDIRECTION DID HE CHARGE US WITH BAD FAITH WHEN HE EMPHASIZED THAT BRAZIL HAD NEGOTIATED IN GOOD FAITH.

3. ONLY IN PASSING DID SILVEIRA NOTE THAT THE GOB HAD NOT REQUESTED A WAIVER OF THE PROVISIONS OF THE LAW, AND WHEN HE DID MAKE THE OBSERVATION HE DID NOT INTRODUCE THE JURIDICAL ASPECT.

4. SILVEIRA ALSO TOUCHED ON THE QUESTION OF THE DIFFICULTIES THE BRAZILIAN AIR FORCE WAS HAVING WITH THE PURCHASE OF THE F-5'S, SAYING THAT THE MATTER HAD BEEN RAISED WITH HIM BY THE AIR MINISTER AND THE AIR FORCE CHIEF OF STAFF. HE MADE NO DIRECT LINKAGE WITH THE FMS SUSPENSION.

5. IN MY REPLY TO HIS PROTESTS, I TOLD SILVEIRA THE FOLLOWING:

A. AT NO TIME, NOT IN 1972 OR NOW IN 1975, HAD THE UNITED STATES IN ANY WAY GIVEN UP ITS LEGAL POSITION ON THE RIGHT OF US VESSELS TO FISH SEAWARD OF TWELVE MILES. THE ENTIRE THRUST OF THE AGREEMENT WAS TO AVOID PREJUDICE TO THE JURIDICAL POSITIONS OF THE TWO SIDES. OUR NOTE OF APRIL 16 CONTAINED OUR INTERPRETATION OF THE AGREEMENT IN THESE RESPECTS AS THE FOREIGN MINISTRY NOTE OF APRIL 25 DID FOR THE BRAZILIAN SIDE. THERE OBVIOUSLY WAS A LARGE GAP BETWEEN THE RESPECTIVE JURIDICAL POSITIONS AND BETWEEN THE RESPECTIVE NATIONAL LEGISLATIONS REFLECTING THOSE POSITIONS. THE TWO SEIZURES HAD ILLUSTRATED THE FACT THAT THE FUNDAMENTAL DIFFERENCES EXISTED.

B. I COULD NOT AGREE THAT THE SHRIMP AGREEMENT, WHICH SOUGHT TO PERMIT A PRACTICAL WAY AROUND THE DIFFERENCES WITHOUT SIGNIFYING THE ACCEPTANCE BY EITHER SIDE OF THE OTHER'S BASIC PRINCIPLES, WAS USELESS. THE AGREEMENT IN 1972 HAD BEEN, IN GOOD PART, THE RESULT OF THE RECOGNITION BY BOTH SIDES OF THE SEVERE DAMAGE TO THE BROAD RELATIONSHIP

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THAT COULD BE CAUSED BY A SPIRAL OF FRICTION AND CONFLICT, ALONG ECUADOREAN-PERUVIAN LINES, INDUCED BY THE APPLICATION OF NATIONAL LEGISLATION. THE FACT THAT, IN THREE YEARS UNDER THE AGREEMENT, THE MARANHÃO SEIZURES HAD BEEN REALLY THE ONLY INCIDENT DEMONSTRATED TO ME THE UTILITY OF THE AGREEMENT AND STOOD IN CONTRAST TO THE UNLIMITED NUMBER OF INCIDENTS THAT WOULD HAVE OCCURRED WITHOUT AN AGREEMENT. THE HOPE, PERHAPS EVEN THE EXPECTATION, BUT

NOT THE COMMITMENT, IMPLICIT IN THE AGREEMENT THAT FISHING WOULD BE CONCENTRATED IN THE AREA OF AGREEMENT HAD BEEN THWARTED ONLY ONCE. IN THIS SENSE, THE MARANHAO CASE APPEARED TO BE A SPORT, AN ISOLATED OCCURRENCE. THERE WAS NO GUARANTEE IT WOULD NOT HAPPEN AGAIN, BUT THE HISTORICAL RECORD SUGGESTED THAT THE PRESENT PROBLEM WAS EXCEPTIONAL.

C. NOW THAT THE UNDERLYING DIFFERENCES HAD BEEN BROUGHT INTO PLAY, THE USG WAS TAKING URGENT, VIGOROUS AND IN SOME RESPECTS EXTRAORDINARY MEASURES TO ASSURE THAT THE ACTION WE WERE OBLIGED TO TAKE UNDER OUR LAW WOULD NOT AFFECT BROAD US-BRAZILIAN RELATIONS. THE EMBASSY, IMMEDIATELY THE SITUATION HAD ARISEN, HAD STRONGLY URGED THE SEEKING OF A PRESIDENTIAL WAIVER. THAT RECOMMENDATION

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ACTION SS-25

INFO OCT-01 ISO-00 SSO-00 NSCE-00 /026 W

----- 044074

O 062234Z MAY 75

FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC NIACT IMMEDIATE 9079

C O N F I D E N T I A L SECTION 2 OF 2 BRASILIA 03541

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HAD BEEN QUICKLY ACTED UPON; THE WAIVER PROCESS WAS NOW FAR ADVANCED; AND THE GRANTING OF THE WAIVER--A PERSONAL ACT BY THE PRESIDENT--WAS EXPECTED SHORTLY. THE WAIVER WOULD RETURN THE FMS SITUATION TO THE STATUS QUO ANTE. OBVIOUSLY, WE WERE INTENT UPON REDUCING DAMAGE TO THE MINIMUM POSSIBLE. IT WAS CLEARLY UNDERSTOOD BY US THAT THE GOB HAD NOT IN ANY WAY SOUGHT THE WAIVER; THAT WAS A UNILATERAL DECISION, CONSISTENT WITH OUR LAW AND WITH OUR DESIRE TO LIMIT THE EFFECTS OF THE OBLIGATORY SUSPENSION.

D. CONCERNING THE FORM OF NOTIFICATION OF THE SUSPENSION, IT APPEARED TO ME THAT THE HOPE IN WASHINGTON

HAD BEEN THAT THE WAIVER WOULD BE OBTAINED BEFORE ANY FMS CASES REQUIRED IMMEDIATE ACTION. IN THAT EVENT, THE SUSPENSION WOULD HAVE BEEN WITHOUT PRACTICAL EFFECT ON FMS ACTIVITY OR ON THE RELATIONSHIP IN GENERAL. UNFORTUNATELY, A COUPLE OF FMS TRANSACTIONS THAT REQUIRED IMMEDIATE HANDLING HAD ARISEN, AND THE QUIET RESOLUTION HAD PROVEN IMPOSSIBLE. FAR FROM BEING DISCOURTEOUS, THE EFFORT HAD BEEN DIRECTED AT KEEPING THE MATTER IN THE LOWEST KEY POSSIBLE.

6. PICKING UP THE REFERENCE TO THE F-5 PROBLEM, I EMPHASIZED TO SILVEIRA THE PERSONAL CONCERN THAT THE BRAZILIAN AIR FORCE COMPLAINTS HAD CAUSED ME BECAUSE OF MY DESIRE FROM THE BEGINNING THAT THE PURCHASE BE HANDLED IN ANY EXEMPLARY FASHION. I WENT OVER IN SOME DETAIL THE STEPS THAT HAD

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BEEN TAKEN BY US HERE IN BRAZIL AND IN WASHINGTON TO INVESTIGATE THE COMPLAINTS AND RESOLVE AS MANY OF THEM AS POSSIBLE. I POINTED OUT THAT THE F-5 DIFFICULTIES AND THE FMS SUSPENSION WERE TOTALLY DISTINCT QUESTIONS. HE AGREED.

7. BY THE END OF THE LONG CONVERSATION--IN WHICH SILVEIRA, CONTRARY TO HIS STYLE, LISTENED WITHOUT INTERRUPTION TO MY STATEMENTS--I HAD THE IMPRESSION THAT HE FELT BETTER. IN PARTICULAR, HE SEEMED TO UNDERSTAND AND APPRECIATE THAT WE WERE TRYING TO CONTAIN THE PLAY-OUT OF THE SEIZURES. I DO NOT MEAN TO SAY BY THAT THAT HE WAS SATISFIED, BUT HE DID APPEAR RELIEVED.

8. WHEN I SAW HIM AGAIN THIS MORNING ON STILL ANOTHER MATTER, HE SEEMED IN THE SAME, MORE POSITIVE MOOD. HE TOLD ME THAT HIS LETTER TO THE SECRETARY HAD BEEN SETN BEFORE HIS TALK WITH ME. SIGNIFICANTLY, HE REFERRED IN THIS SECOND CONVERSATION TO THE PRESIDENT'S HAVING BEEN "VERY ANGRY" WHEN HE HEARD ABOUT THE SUSPENSION. (THE PREVIOUS EVENING HE HAD USED "VERY PREOCCUPIED.")

9. AS TO THE POSSIBLE REASONS FOR THE STRONG REACTIONS: ABOVE ALL, THE GOB HAS ALWAYS BEEN VERY SENSITIVE TO WHAT IT CONSIDERS UNILATERAL, ARBITRARY ACTS BY US. AS THE VERY SIMILAR REACTION IN MARCH 74 TO THE ANNOUNCEMENT OF THE INITIATION OF COUNTERVAILING PROCEEDINGS AGAINST SHOES DEMONSTRATED, THE GOB HAS LITTLE PATIENCE WITH THE OPERATION OF OUR LAWS THAT AFFECT ITS INTERESTS. (SILVEIRA, INCIDENTALLY, MADE NO EFFORT TO REBUT MY STATEMENT THAT I WAS CERTAIN THAT THE LEGAL CONSEQUENCES OF SEIZURES HAD BEEN FULLY UNDERSTOOD IN 1972 AND THAT THEY HAD BEEN POINTED OUT AGAIN BY US IN CONNECTION WITH THE CURRENT CASE HERE AND IN WASHINGTON.) I ALSO SUSPECTED THAT THE

FOREIGN MINISTRY, WHICH HAS PLAYED THE SEIZURES AND THEIR EFFECTS IN QUITE LOW KEY AND EVEN CASUALLY (NOTE THE FACT--STATE 101046--THAT DINIZ WAS NOT KEPT INFORMED BY BRASILIA) DID NOT ALERT THE PRESIDENCY TO THE IMPLICATIONS. WHEN THE PRESIDENT GOT WORD OF THE SUSPENSION--PROBABLY FROM AN AFFECTED AND POORLY BRIEFED MILITARY MINISTER WHO, I WOULD BET, EXAGGERATED THE SITUATION--HE WAS TAKEN ABACK AND PROBABLY CHEWED OUT SILVEIRA SEVERELY. SILVEIRA IN
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TURN HAD TO REACT STRONGLY. (SILVEIRA'S RELATIONS WITH THE MILITARY MINISTERS ARE NOT OF THE BEST. MOREOVER, SECTORS OF THE ARMED FORCES HAVE NOT BEEN OVERLY HAPPY WITH THE COMPLEX PROCEDURE AND, TO THEM, THE LACK OF FINANCIAL ADVANTAGE OF FMS--THE F-5 SITUATION BEING PARTICULARLY AND PAINFULLY RELEVANT--AND THE SUSPENSION WAS TOO MUCH. THERE PROBABLY WAS THE ADDITIONAL FACTOR OF CONCERN THAT THE GOB HAD BEEN HAD IN THE SHRIMP AGREEMENT, AND TO THE FOREIGN MINISTRY THIS WOULD BE PARTICULARLY EMBARRASSING. BASICALLY, THOUGH, THE CONTROLLING REASON WAS SHARP RESENTMENT AT WHAT WAS CONSIDERED AN ARBITRARY ACTION--WHOSE SCOPE WAS BELIEVED TO BE MUCH BROADER THAN IT REALLY WAS--AGAINST A VERY GOOD FRIEND.

9. LATE ADD: SILVEIRA HAS JUST CALLED ME TO SAY THAT ASSISTANT SECRETARY ROGERS HAD CALLED HIM TO TELL HIM THE WAIVER WOULD BE GRANTED IMMEDIATELY. HE COMMENTED: "THAT'S VERY NICE. EVERYTHING'S FINE. IT'S RESOLVED."
CRIMMINS

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Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: SHIP DETENTION, DIPLOMATIC DISCUSSIONS, FISHING BOATS, MILITARY ASSISTANCE AGREEMENTS, MILITARY SALES
Control Number: n/a
Copy: SINGLE
Draft Date: 06 MAY 1975
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975BRASIL03541
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: X1
Errors: N/A
Film Number: D750159-0286
From: BRASILIA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750575/aaaacqgh.tel
Line Count: 257
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION SS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: EXDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: EXDIS
Reference: 75 STATE 104657
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 19 MAY 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <19 MAY 2003 by CunninFX>; APPROVED <20 MAY 2003 by GolinoFR>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: SUSPENSION OF FMS AS A RESULT OF SHRIMP BOAT SEIZURES
TAGS: PFOR, EFIS, MASS, BR
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006